Supreme Court, U.S.
FILED
NOV 14 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-715

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

EDWARD L. MOORE,

Petitioner,

v.

DAVID LAVICKY,

Respondent.

APPENDIX C
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MICHAEL C. TURPEN
ATTORNEY GENERAL OF OKLAHOMA

ROBERT A. NANCE *
ASSISTANT ATTORNEY GENERAL
DEPUTY CHIEF, FEDERAL DIVISION

112 State Capitol Building
Oklahoma City, OK 73105
(405) 521-3921

ATTORNEYS FOR PETITIONER

* Counsel of Record

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APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED

July 14, 1982

DAVID LAVICKY, Plaintiff, vs. BOB BURNETT, Deputy Sheriff of Garfield Co.; RAY PICKLE, Sheriff of Garfield Co.; SAM OTIS, Deputy Sheriff of Alfalfa Co.; DELMAR COPPOCK, Sheriff of Alfalfa Co.; ED L. MOORE, Assistant District Attorney of Alfalfa Co.; UNITED STATES FIDELITY & GUARANTEE CO., a corporation; WESTERN SURETY CO., a corporation, Defendants.	)	No. CIV-80-865-T

AMENDED JUDGMENT

In accordance with the Court's Order of even date, the Judgment entered herein

on March 24, 1982, is hereby amended as follows:

IT IS ORDERED AND ADJUDGED that judgment be entered herein in favor of the defendant, Ray Pickle, and against the plaintiff, David Lavicky, as to all claims.

IT IS FURTHER ORDERED AND ADJUDGED that judgment be entered herein in favor of the plaintiff, David Lavicky and against the defendants Bob Burnett and United States Fidelity and Guarantee Co., jointly and severally, in the sum of $300.00.

IT IS FURTHER ORDERED AND ADJUDGED that judgment be entered herein in favor of the plaintiff, David Lavicky, and against the defendants Sam Otis and Western Surety Co., jointly and severally, in the sum of $300.00.

IT IS FURTHER ORDERED AND ADJUDGED that judgment be entered herein in favor

of the plaintiff, David Lavicky, and against the defendants Delmar Coppock and Western Surety Co., jointly and severally, in the sum of $300.00.

IT IS FURTHER ORDERED AND ADJUDGED that judgment be entered herein in favor of the plaintiff, David Lavicky, and against the defendant Ed L. Moore, individually, in the sum of $300.00.

DATED this 14th day of July, 1982.

_____
UNITED STATES DISTRICT JUDGE

Entered in judgment docket July 14, 1982.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED

July 14, 1982

DAVID LAVICKY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. CIV-80-865-T
	)	
BOB BURNETT, et al.,	)	
	)	
Defendants.	)	

ORDER

This action is before the Court for consideration of the Motion for Judgment Notwithstanding the Verdict filed jointly herein by defendants Bob Burnett, Sam Otis, Delmar Coppock and Ed L. Moore. Also before this Court is defendant Moore's separate Motion for Judgment Notwithstanding the Verdict and, in the Alternative, for New Trial. Plaintiff has responded to the motions and the parties

have submitted briefs in support of their respective positions.

Punitive damages are not a favorite in law and are to be allowed only within narrow limits. In order to sustain an award of punitive damages in an action brought pursuant to 42 U.S.C. § 1983, the evidence must be sufficient to permit a jury to find that the conduct of the public official complained of is such that it manifests such aggravating circumstances as malice, ill will, reckless indifference to the property rights of others or a desire to injure. Silver v. Cormier, 529 F.2d 161 (10th Cir. 1976); Spence v. Staras, 507 F.2d 554 (7th Cir. 1974); Fisher v. Volz, 496 F.2d 333 (3rd Cir. 1974).

The question at hand is whether the evidence presented by plaintiff was sufficient to support submitting the issue of punitive damages to the jury.

During the course of the trial the Court held that the circumstances of the case clearly required that a search warrant should have been obtained before the search and seizure of plaintiff's vehicle and, as a matter of law, such search and seizure without a warrant was a violation of plaintiff's Fourth Amendment entitlements. The evidence established that the failure to obtain a search warrant prior to the search and seizure was a mistake on the part of the officer involved, for which mistake the jury compensated the plaintiff in the sum of $300.00 actual damages. Likewise, the disposition of plaintiff's property by the other defendants, without proper legal procedures, resulted in the same award of damages against each of them. As to the actual damages sustained, it cannot be held that the evidence does not support the jury's verdicts. However, upon careful review of all of the evidence it is clear that

the plaintiff's proof failed entirely to establish such ill will, desire to injure, reckless indifference or malice on the part of any defendant to support the submission of the issue of punitive damages to the jury. The mistake in judgment in the performance of their respective duties subjected the defendants to actual damages, but such mistakes fell far short of the type of aggravated circumstances required for the award of punitive damages under the applicable authorities. For example, Deputy Burnett had recommended probation for plaintiff in a previous car theft case and on another occasion tried to help him by counseling plaintiff about associating with a more law abiding group of friends. All defendants had good reason to believe that plaintiff had substantially commingled stolen parts with parts on his own vehicle. A controlling motivation in their actions sur-

rounding the holding and disposition of the property was a desire to avoid returning to plaintiff the commingled parts they believed he had stolen from others when returning to him the rest of his own vehicle. Again, while their failure to seize, hold and dispose of the property was not in conformance with required legal procedures, it can hardly be said that their actions were based on any of the several aggravated circumstances required to support punitive damages. Accordingly, the jury's verdict as to punitive damages, is hereby set aside, and the defendants' Motions for Judgment Notwithstanding the Verdict are sustained as to punitive damages. In all other respects, the defendants' motions are hereby denied. The judgment will be amended in conformance with this Order.

IT IS SO ORDERED this 14th day of July, 1982.

UNITED STATES DISTRICT JUDGE